

**REMARKS**

By this Amendment, Claims 1, 2, 7, 12, 14, 17, 19, and 25 are amended.

Claim 24 has been cancelled, the features of which have been added to Claim 19, leaving Claims 1-23 and 25-26 pending in this application. No new matter has been added by the amendments. Reconsideration and allowance of the application are respectfully requested in view of the following remarks.

**Allowable Subject Matter**

Although the Official Action at page 2 indicates that Claim 14 has been rejected, a careful study of the Official Action reveals that no rejection under §112, §102, or §103 has been lodged against Claim 14. Since an Official Action must explain the basis for all rejections, and because the Official Action fails to provide such a basis for Claim 14, Claim 14 is understood to contain allowable subject matter. Since Claim 14 was originally presented in dependent form, it has been rewritten in independent form, including the subject matter of all claims from which it depends. Accordingly, Applicants respectfully submit that Claim 14 is now in full condition for allowance.

**Claim Objections**

The Official Action objected to Claim 2 because the phrase "tartar sauce and barbeque sauce" should read "tartar sauce or barbeque sauce." The Official Action objected to Claim 12 because the phrase "predetermined pressure and" should read "predetermined pressure." The Official Action objected to Claim 19 because the phrase "is accessible rom outside" should read "is accessible from outside."

In response, Applicants have amended the Claims to correct the informalities.

**Claim Rejections - 35 U.S.C. § 112.**

The Official Action rejected Claims 25 and 26 under 35 U.S.C. §112 as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention and further alleges that there is insufficient antecedent basis for this limitation in the claim. Specifically, the Official Action alleges that there is insufficient antecedent basis for recitations of "a bracket" in Claim 25 and "the brackets" in Claim 26.

While Applicants do not acquiesce in the rejection, Claim 25 has been amended for clarification without narrowing the scope of either of these claims.

**Claim Rejections - 35 U.S.C. § 102**

The Official Action rejected Claims 1-5, 19 and 22-23 under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent No. 2,600,553 to Lord ("Lord").

Claim 1 recites a condiment dispenser comprising a holder having walls and a bottom which together define an interior of the holder, one of the walls of the holder being provided with a through opening, a disposable condiment container having a generally rectangular shape and defining an interior containing a quantity of an edible food condiment, the condiment container being provided with a dispensing nozzle in a wall through which the condiment in the condiment container is dispensed from the condiment container, the condiment container being adapted to be positioned in the interior of the holder with the dispensing nozzle accessible through the one wall from outside the holder so that the condiment can be dispensed

from the condiment container, and a shaft on which the condiment container is adapted to be wound to apply pressure to the condiment in the condiment container to dispense the condiment through the dispensing nozzle.

Claim 2 recites that the edible food, condiment in the condiment container is one of ketchup, mustard, mayonnaise, tartar sauce, or barbecue sauce.

To anticipate a Claim under 35 U.S.C. §102(b), a reference must disclose all features of the Claim.

In this case, Lord does not disclose all of the features of Claims 1 and 2. Lord discloses a paste or cream tube, and specifically a toothpaste tube (Col. 1, lines 1-11). Toothpaste is not an edible food condiment as recited in Claims 1 and 2, and should not be ingested. Lord does not disclose an edible food condiment or that the edible food condiment that is mustard, mayonnaise, tartar sauce, or barbecue sauce.

In addition, Lord does not disclose a disposable condiment container having a generally rectangular shape as recited in Claim 1. Instead, Lord discloses conventional collapsible tubes, such as toothpaste tubes (Col. 1, lines 1-5 and lines 37-38).

Finally, Lord fails to disclose a dispensing nozzle in a wall. Instead, Lord discloses a bottom having a pyramidal formation 19 that includes an apical opening 20 of a size to receive the neck of the tube (See Figure 2 and Col. 2, lines 13-17).

For at least these reasons, Claims 1 and 2 are not anticipated and allowance is respectfully requested.

Claim 19 recites a condiment dispenser for dispensing condiment from a condiment containing bag through a dispensing nozzle provided on the condiment containing bag. The condiment dispenser comprises a holder having a plurality of

upright walls surrounding an enclosed space in the holder which is adapted to receive the condiment containing bag so that the dispensing nozzle of the condiment containing bag is accessible from outside the holder, a shaft rotatably mounted at the holder and on which the condiment containing bag is adapted to be wound to apply pressure to the condiment in the condiment containing bag and thereby dispense the condiment in the condiment containing bag through the dispensing nozzle, and a handle connected to the shaft to rotate the shaft so as to wind the condiment containing bag on the shaft and apply pressure to the condiment in the condiment containing bag causing the condiment to be dispensed from the dispensing nozzle. The opening in the holder that is adapted to receive the dispensing nozzle of the condiment containing bag forms a part of a vertically extending through slot in the holder.

Lord discloses a bottom having a pyramidal formation that includes an apical opening sized to receive the screw-threaded neck of a tube as shown in Figure 2. Lord does not disclose that the opening in the holder that is adapted to receive the dispensing nozzle of the condiment containing bag forms a part of a vertically extending through slot in a side wall of the holder. Thus, Claim 19 is not anticipated by Lord. In addition, Lord does not disclose condiments, which are used to flavor foods.

As Claim 1 and 19 are independent claims and are patentable over Lord for at least the reasons discussed above, dependent Claims 2-13, 14-18, 20-23 and 25-26 are also patentable over Lord for at least the same reasons as the independent claims from which they directly or ultimately depend.

**Claim Rejections - 35 U.S.C. § 103**

The Official Action rejected Claims 2, 12-13, and 15 under 35 U.S.C. § 103(a) as allegedly unpatentable over Lord and in further view of U.S. Patent No. 4,269,330 to Johnson ("Johnson").

The Official Action rejected Claims 6, 10-11 and 24 under 35 U.S.C. § 103(a) as allegedly unpatentable over Lord and in further view of U.S. Patent No. 6,126,129 to Herron ("Herron").

The Official Action rejected Claims 7 and 25 under 35 U.S.C. § 103(a) as allegedly unpatentable over Lord and in further view of U.S. Patent No. 4,220,260 to Webster ("Webster").

The Official Action rejected Claims 8-9 and 18 under 35 U.S.C. § 103(a) as allegedly unpatentable over Lord in further view of U.S. Patent No. 6,691,874 to Credle, Jr. ("Credle").

The Official Action rejected Claims 16, 20-21 and 26 under 35 U.S.C. § 103(a) as allegedly unpatentable over Lord as modified in claims 1, 20 and 25 respectively and in further view of U.S. Patent No. 6,792,830 to DeKeuster et al. ("DeKeuster").

The Official Action rejected Claim 17 under 35 U.S.C. § 103(a) as allegedly unpatentable over Lord in view of DeKeuster and in further view of Webster.

Under 35 U.S.C. §103(a), the Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. M.P.E.P. § 2142. As set forth in M.P.E.P. § 2143, one requirement for establishing a *prima facie* case of obviousness is that the combination of references must teach or suggest all the claim features. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Additionally, the Patent Office must provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" and not "mere conclusory statements." *KSR Int'l Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (U.S. 2007) (quoting *In re Kahn*, 441 F.3d 977, 988, (Fed. Cir. 2006)). Rationales include simple substitution of one known element for another to obtain predictable results, use of known techniques to improve similar devices in the same way, applying a known technique to a known device ready for improvement to yield predictable results, choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success, known work in one field that prompts variations of it for use in either the same field or a different field based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill and some teaching, suggestion or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teaching to arrive at the claimed invention. The Official Action must also show that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective function. "Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in view of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.*," 72 Federal Register 195 (10 October 2007), pp. 57526 -57535.

The Official Action takes the position that Claims 2, 12-13, and 15 are unpatentable over Lord in view of Johnson. The Official Action admits that Lord does not disclose all features of Claims 2, 12-13, and 15 and relies on Johnson to supply the missing features.

Claim 2 is patentable over Lord in view of Johnson because a person of ordinary skill in the art would not combine the food condiments of Johnson with the device of Lord. Lord discloses the use of the device with creams and pastes, "the consistency of which precludes any further movement of the paste out of the tube or any drip of its contents from the tube, when the device is not in use" (Col. 2, lines 8-14). Thus, a person of ordinary skill in the art would not use food condiments such as ketchup, mustard, mayonnaise, tartar sauce, or barbecue sauce with Lord's device since these food condiments would drip.

Claims 12, 13, and 15 are patentable over Lord in view of Johnson because a person of ordinary skill in the art would not use a valve or a peelable seal on a spout covering a valve, as recited in Claims 12, 13, and 15, to prevent the condiment in the condiment container from being dispensed upon application of a pressure less than a predetermined pressure because, as described above, Lord's device is designed for use with creams and pastes, the consistency of which precludes any further movement of the paste out of the tube or any drip of its contents from the tube, when the device is not in use, as described above.

The Official Action takes the position that Claims 6, 10-11 and 24 are unpatentable over Lord and in view of Herron.

Claim 6 recites a dispensing nozzle accessible from outside the holder by virtue of the dispensing nozzle being positioned in a vertically extending through slot in one of the walls of the holder. Claim 10 recites that the dispensing nozzle comprises a flange fixed to the condiment container and a spout extending from the flange, the spout communicating with the interior of the condiment container. Claim 11 recites that the dispensing nozzle is made of plastic.

Claims 6, 10, and 11 are patentable over Lord in view of Herron. Lord discloses a device for use in conjunction with tubes of toothpaste, which have standardized nozzles. Likewise, Herron discloses a device for holding intravenous (IV) solution bags, which are formed with standardized nozzles. A user of ordinary skill in the art would not be motivated to add a vertical through slot for use with tubes of toothpaste, which have standardized nozzles that are downwardly extending when placed in the device of Lord.

Claim 24 has been cancelled, and the features contained therein added to Claim 19, which is patentable as described above.

The Official Action takes the position that Claims 7 and 25 are unpatentable over Lord in view of Webster.

Claims 7 and 25 recite that opposite end portions of the shaft are supported in respective brackets which are slidably supported in slots formed in the holder and that the respective brackets each include oppositely positioned vertical sides and a groove between the oppositely positioned vertical sides.

Neither Lord nor Webster discloses all features of Claims 7 and 25 including respective brackets including oppositely positioned vertical sides and a groove between the oppositely positioned vertical sides. Thus, Claims 7 and 25 are patentable over Lord in view of Webster.

The Official Action takes the position that Claims 8-9 and 18 are unpatentable over Lord in further view Credle. Specifically, Lord does not disclose that the condiment container is a flexible plastic bag sealed along its perimeter and having a dispensing nozzle positioned in one corner of the bag. Lord also does not disclose that the condiment container is a flexible plastic bag having angled seals and a

bottom seal (See pages 17-18 of the Official Action).

A person of ordinary skill in the art would not combine the bag of Credle with the device of Lord because the bag of Credle is not configured for use with the device of Lord. Lord discloses a device having a pyramidal downwardly extending opening with sidewalls that receive the threaded nozzle of a tube of toothpaste (Col. 2, lines 14-47). Because of the configuration of the bag of Credle, it would be difficult to position the nozzle through the downwardly extending opening of Lord's device. In addition, the bags of Credle are designed to be hung and thus include a hanging hole (Col. 4, lines 60-65). As such, a person of ordinary skill in the art would not use the bag of Credle with a device designed to contain the bag. Thus, Claims 8-9 and 18 are patentable over Lord in view of Credle.

The Official Action takes the position that Claims 16, 20-21 and 26 are unpatentable over Lord as modified in claims 1, 20 and 25 respectively and in further view of DeKeuster.

Claim 16 recites a ratchet fixed to the shaft to rotate together with the shaft, and a pawl positioned to engage the ratchet to permit rotation of the pawl in one direction while preventing rotation of the pawl in an opposite direction. Claim 21 recites that the means for fixing includes a ratchet fixed to the shaft and a pawl engageable with the ratchet to permit rotation of the pawl in one direction while preventing rotation of the pawl in an opposite direction. Claim 26 recites a ratchet fixed to the shaft to rotate together with the shaft and a pawl engageable with the ratchet to permit rotation of the pawl in one direction while preventing rotation of the pawl in an opposite direction, the pawl being mounted on one of the brackets.

Claims 16, 21, and 26 are patentable over Lord in view of DeKeuster. Lord

does not disclose a ratchet fixed to the shaft and a pawl engageable with the ratchet. DeKeuster discloses a ratchet wrench, but does not disclose a ratchet fixed to the shaft. Thus, the combination of references does not disclose the features recited in Claims 16, 21, and 26.

Claim 20 recites a means for fixing a rotational position of the shaft after the shaft has been rotated to wind condiment containing bag on the shaft and apply pressure to the condiment in the condiment containing bag causing the condiment to be dispensed from the dispensing nozzle.

Claim 20 is also patentable over Lord in view of DeKeuster. As noted in the Official Action, Lord does not disclose a means for fixing a rotational position of the shaft after the shaft has been rotated to dispense a condiment from the nozzle. Likewise, DeKeuster discloses a ratchet wrench, but fails to disclose a means for fixing a rotational position of the shaft after the shaft has been rotated to dispense a condiment. Since Lord and DeKeuster do not disclose all of the features of Claim 20, Claim 20 is patentable.

The Official Action takes the position that Claim 17 is unpatentable over Lord in view of DeKeuster and in further view of Webster.

Claim 17 teaches opposite end portions of the shaft are supported in respective brackets which are slidable supported in respective slots in the holder, the pawl being fixed to one of the brackets. The respective brackets each comprise oppositely positioned vertical sides and a groove between the oppositely positioned vertical sides.

Claim 17 is patentable over Lord in view of DeKeuster and in further view of Webster. As noted above, neither Lord nor Webster discloses respective brackets,

each comprising oppositely positioned vertical sides and a groove between the oppositely positioned vertical sides.

**Conclusion**

Therefore, this application is believed to be in condition for allowance. Should there be any remaining issues concerning this reply or the application in general, to expedite prosecution, the Examiner is respectfully requested to contact the undersigned at the telephone number given below.

Respectfully submitted,

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